

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Louis B. Rosenberg et al
Application No. : 10/615,927
For : **Networked Applications Including Haptic Feedback**
Filed : July 10, 2003
Examiner : Regina Liang
Art Unit : 2629

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
DETERMINATION

Sir:

In accordance with 37 C.F.R. § 1.705(b), this request for reconsideration of Patent Term Adjustment Determination is made with payment of the Issue Fee, after the mailing of a Notice of Allowance. Applicant submits herewith the following:

- (1) Payment of the fee set forth in 37 C.F.R. § 1.18(e); and
- (2) A statement of the facts involved.

In the Notice of Allowance mailed May 4, 2009, the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) indicated a PTA of 1,171 days. It is believed that the correct PTA to date is 1,459 days, less the number of days of delay attributable to the filing of the Rule 312 amendment prior to payment of the Issue Fee.

Applicant respectfully requests that the patent term adjustment indicated in the Notice of Allowance mailed May 4, 2009 be reconsidered in view of the following two reasons:

(1) the PTA should be reduced by 25 days for Applicant delay for filing an Information Disclosure Statement on November 14, 2008 after filing a response to Final Office Action and Request for Continued Examination on October 20, 2008; and

(2) the PTA should be increased by 313 days based on the holding in *Wyeth et al. v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008). Based on the holding in *Wyeth*, Applicant is entitled to delays for both the number of days beyond a three year pendency of an application as well as delays accrued during the first three years of pendency of the application. The delay listed on the Determination of Patent Term Adjustment does not account for the delay of 313 days of USPTO delay that accrued for failing to issue the patent within 3 years of filing, beginning on the day of the mailing of the first Office Action on December 11, 2007 until the date of filing of an RCE on October 20, 2008.

Thus the total delay including the additional debit and credit above should be 1,459 days, less any days of delay attributable to the filing of an Amendment under Rule 312 on July 29, 2009.

In support of this request and pursuant to 37 C.F.R. § 1.705(b), Applicant makes the following statements:

I. Statements under 37 C.F.R. § 1.705(b)(2)(i)

The correct total PTA credit is 1,248 days, less the number of days of delay attributable to the filing of the Rule 312 amendment prior to payment of the Issue Fee. The 1,248 day PTA is based on two time periods:

(1) A credit of 1,187 days is due under § 1.702(a)(1) and is due to the PTO's failure to mail a notification under 35 USC § 132 or a notice of allowance within 14 months of the application's filing date;

(2) A credit of 313 days is due under § 1.702(b) and is due to the PTO's failure to issue a patent within three years of the filing date;

(3) A debit of 16 days under § 1.704(b) for failing to respond to an Office Action within 3 months of the mailing data of the Office Action; and

(4) A debit of 25 days under § 1.704(c)(8) for filing an Information Disclosure Statement after the filing of a response to Office Action.

II. Statements under 37 C.F.R. § 1.705(b)(2)(ii)

The following dates are relevant to the time periods noted in section I above:

(1) The relevant dates for the 1,187 day credit under § 1.703(a)(1) are the application's filing date of July 10, 2003 and the mailing date of a first Office Action on December 11, 2007; and

(2) The relevant dates for the 313 day credit under § 1.703(b) are the mailing date of the first Office Action on December 11, 2007 and the data of filing of an RCE on October 20, 2008.

The total PTA under 37 C.F.R. § 1.703(f) based on the credits noted above is 1,500 days.

III. Statements under 37 C.F.R. § 1.705(b)(2)(iii)

The patent issuing from the present application is subject to a terminal disclaimer filed on March 9, 2009 over U.S. Patent Nos. 5,956,484; 6,101,530; 6,125,385; 6,161,126; 6,353,850; and 6,859,819.

IV. Statements under 37 C.F.R. § 1.705(b)(2)(iv)

The following statements are required by 37 CFR § 1.705(b)(2)(iv)(A) and list any circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in § 1.704:

(1) The relevant dates for the 16 day debit under § 1.704(b) are the mailing date of an Office Action on December 11, 2007 and the filing of a response on March 27, 2008.

(2) The relevant dates for the 25 day debit under § 1.704(c)(8) are the filing of a response to Office Action and Request for Continued Examination on October 20, 2008 and the filing of an Information Disclosure Statement on November 14, 2008.

(3) The Amendment under 37 C.F.R. § 1.312 filed on July 29, 2009, prior to payment of the Issue Fee.

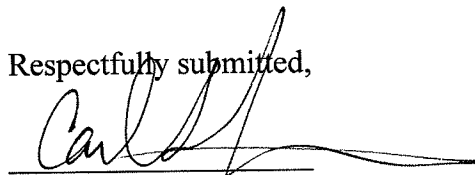
The total PTA debit based on periods (1) and (2) above is 41 days plus any delay attributable to the Amendment under 37 C.F.R. § 1.312 filed prior to payment of the Issue Fee.

V. Conclusion

Applicant respectfully requests the PTA determined by the U.S. Patent and Trademark Office by reconsidered in light of the foregoing. Based on the total PTA credits and debits set forth above, the correct PTA for the present application is 1,459 days, less any delay attributable to the filing of an Amendment under 37 C.F.R. § 1.312 prior to payment of the Issue Fee.

Date: July 30, 2009

Respectfully submitted,



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